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Director

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FBI Law Enforcement Bulletin

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Protecting Cultural Heritage from Art Theft

International Challenge, Local Opportunity

By NOAH CHARNEY, M.A., M.A., PAUL DENTON, M.B.A., M.S.C.J.,
and JOHN KLEBERG, M.Ed.

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When someone thinks of art crime, a Hollywood image is conjured, one of black-clad cat burglars and thieves in top hats and white gloves. But, the truth behind art crime, one misunderstood by the general public and professionals alike, is far more sinister and intriguing. Art crime has its share of cinematic thefts and larger-than-life characters, but it also is the realm of

international organized crime syndicates, the involvement of which results in art crime funding all manner of other serious offenses, including those pertaining to the drug trade and terrorism. Art crime has shifted from a relatively innocuous, ideological crime into a major international plague.

Over the last 50 years, the U.S. Department of Justice (DOJ) has ranked art crime

behind only drugs and arms in terms of highest-grossing criminal trades.¹ There are hundreds of thousands of art crimes reported per year, but, despite this fact, the general public only hears about the handful of big-name museum heists that make international headlines. In Italy alone there are 20,000 to 30,000 thefts reported annually, and many more go unreported.² In fact, even though reported

art crime ranks third in the list of criminal trades, many more such incidents go unreported worldwide, rather than coming to the attention of authorities, making its true scale much broader and more difficult to estimate.

Fundamentalist terrorist groups rely on looted antiquities as a major funding source. Mohammed Atta tried to sell looted antiquities in 1999 as a funding source for the 9/11 attacks.³ In regions, such as Afghanistan, local farmers dig up treasure troves beneath the soil and sell them to local criminal or government organizations for a tiny fraction of their actual value. The antiquities then are smuggled abroad, given a false provenance, and sold, often on

an open market to unsuspecting museums and collectors who never would imagine that their purchase might indirectly fund the Taliban.⁴ One of the most important ways to get the general public and governments alike to take art crime as seriously as it warrants is to highlight the ways in which this seemingly innocuous category of crime not only depletes and damages the world's art and its understanding of it but also fuels the arms trade, drug trafficking, and terrorist activity.⁵

Before World War II, most art theft adhered to the cliché of dramatic museum heists carried out by skillful cat burglars, which has been perpetuated by fiction and the media. But, the reality proves far more

menacing as the recent rash of "blitz" thefts indicates. From the Munch Museum to the Bührle Collection to the Stockholm Museum, the latest trend in art theft is for armed, masked thieves to burst into museums, wave their guns around, grab objects near the exit, and run off. They set off alarms, but because police response time to alarms may be 3 to 5 minutes, the thieves depart in under 2 minutes and avoid any chance of capture.

Since 1960, television media began reporting and glorifying both art crime and the exorbitant prices for which art sells at auction. Around the same time, organized crime groups took over art crime to a great extent, turning what once



Mr. Charney, a professor of art history at The American University of Rome, founded the Association for Research into Crimes Against Art, a nonprofit research group.



Chief Denton heads The Ohio State University Police Division in Columbus and is a retired commander with the Columbus Division of Police.



Mr. Kleberg retired as assistant vice president of The Ohio State University in Columbus and now consults on higher education safety and security, including fine art.

essentially was an individual, often ideological crime category into a major international plague that funds organized crime's other enterprises.⁶

Forgery and crimes of deception remain within the realm of individual con men and skillful artists. While no criminal profile exists for art thieves, who tend to be mercenary criminals with no experience or knowledge of the art world, forgers fit a specific profile, and their modus operandi (MO) can be mapped in a way that if studied by the art trade might prevent future crimes.

Much of the mechanics of art crime—precisely how and for what purpose it is committed—remain mysterious to the general public and police alike. The reasons for this are complex and fascinating. They require an understanding not only of organized crime but of the exclusive and often underhanded machinations of the international art community. The art trade has been, at times, shady and unscrupulous, with closed doors and lips, gentlemanly vows of silence, and blind eyes. What other multimillion dollar market so rarely leaves a paper trail of transactions, regularly hides commodities to avoid luxury tax, and relies so heavily on the unscientific assurance of connoisseurs to determine

authenticity and value, with fortunes in the balance? Few police understand the art world, and few members of the art community work as police officers.

ART POLICE AROUND THE WORLD

Most countries have no dedicated art police, indicating that their government administrations may not consider art crime of sufficient severity

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Much of the mechanics of art crime...remain mysterious to the general public and police alike.

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to warrant a department of its own, despite numerous publications to the contrary. The reason for this is the relative paucity of sufficiently extensive empirical data and statistics on art crime—the result of a cyclical, self-destructive pattern. The empirical data are sparse. Governments do not dedicate resources to gathering and analyzing data on art crime because the existing data have

not proven the extent and severity of the problem.⁷

For this reason, it is useful to consider some of the more successful art squads as a point of reference for other countries and for future action. Some law enforcement bodies recently have established art squads, such as those in Canada and the Netherlands. The FBI formed its art squad in 2004. Scotland Yard established its Arts and Antiques Unit in 1969, disbanded it, and then reestablished it in 1989. Spain and France have extensive art squads, the prior of which uses YouTube to promote the recovery of stolen items. Italy's Carabinieri Division for the Protection of Cultural Heritage stands as the oldest and largest of the world's art squads.

The recovery rate for stolen art remains particularly low, in some cases as low as 2 to 6 percent. It is even rarer to both recover stolen art and successfully prosecute. Because the greatest amount of data and subsequent analysis come from solved cases, ideally involving both the recovery of stolen goods and successful prosecution of the criminals, it becomes understandable that limited data are available on art crime.⁸

INTERPOL's Stolen Works of Art Department acts as an information-gathering point for world art police, keeping track

of reported crimes and stolen objects in a database and functioning as a point of reference. Interpol publishes annual data as reported by constituent countries, but admits that the data from each country are incomplete and reports only a fraction of the total art crime activity. Even so, INTERPOL ranks art crime as the fourth-highest-grossing criminal trade behind only drugs, arms, and human trafficking.⁹ All such rankings are based on best estimates and should be taken merely as an indication of the severity of the crime category. That DOJ also highlights art crime as having become enveloped in the operations of organized crime, therefore funding more sinister

activities, should underscore the need to support police efforts to curb this type of crime.¹⁰

FBI Art Crime Team

Founded in 2004, the FBI's Art Crime Team features several dedicated agents supported by special trial attorneys for prosecutions. The team also maintains the National Stolen Art File (NSAF), a computerized index of reported stolen art for use by law enforcement agencies around the world.¹¹ The Art Crime Team has recovered over 2,600 items valued at approximately \$142 million.¹² Such statistics must be understood in context, however. The cited values for art are based on the estimated open market

value—that which art with legitimate pedigree may sell for at auction. Estimates of the black market value of stolen art based on the amount that undercover agents were asked to pay during sting operations is 7 to 10 percent of its perceived open market value.¹³ The FBI has had remarkable success in this capacity despite the fact that a relatively small number of art thefts occur in the United States. Rather, the U.S. serves as a preferred venue to sell stolen art. For this reason, the FBI has helped other countries recover their stolen art and has participated in numerous undercover operations in collaboration with foreign police forces.

Scotland Yard Arts and Antiques Unit

After it was founded in 1969 as a philatelic squad (investigating stamp thieves) and later disbanded, Scotland Yard's Arts and Antiques Unit was restructured in 1989. The unit has seen remarkable success as museum theft in London has gone down by more than 60 percent in recent years, with an average annual recovery of £7 million (\$11.3 million) worth of stolen art.¹⁴ This follows on the unit's primary engagement with breaking up art forgery and con artist rings. The unit also runs the London Stolen Art Database (LSAD), which includes over



Chained altar pieces demonstrate the threat of theft in houses of worship.

50,000 objects. However, Scotland Yard's jurisdiction only covers London, and the numerous art thefts outside of the city are investigated by local police with no special training in art crime.¹⁵

In 2007, the unit's funding was cut in half, forcing it to seek private funds to fill out its £300,000 (\$487,000) budget.¹⁶ This demonstrates a lack of understanding of the importance and efficacy of the unit, particularly when an estimated £200 million (\$321 million) worth of stolen art comes through the British market each year.¹⁷ To counter this lack of funds, the unit developed clever new policies, such as ArtBeat, a program in which art world specialists work as special constables for several days each month assisting police officers with ongoing investigations.

Italy's Carabinieri Division for the Protection of Cultural Heritage

Italy's military police, the Carabinieri, established the Division for the Protection of Cultural Heritage (*Tutela Patrimonio Culturale*, or TPC) in 1969. The Carabinieri TPC is the world's first dedicated art squad, established after the infamous theft by Cosa Nostra of Caravaggio's *Nativity* from the Church of San Lorenzo in Palermo. It has served, by far,

as the largest and most successful art squad in the world, with over 300 full-time agents. However, Italy also reports more stolen art each year (between 20,000 to 30,000 objects) than any other country (runners-up include Russia and Bulgaria, which report fewer than 7,000 objects stolen annually).¹⁸ The

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...this...crime not only depletes and damages the world's art and its understanding of it but also fuels the arms trade, drug trafficking, and terrorist activity.

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Carabinieri TPC has been active in Iraq and Afghanistan and is sufficiently large and well-funded to undertake policing at-risk archaeological sites, both on land and at sea.

Dutch Art Crime Team

Founded around 2006, the Netherlands Art Crime Team, *Korps landelijke politiediensten (KLPD)*, represents one of the new faces on the international art policing scene. Consisting

of only a few agents, including the only one in the Netherlands with experience and expertise in investigating art crime, it has developed a national database on stolen art. The team was founded when it became clear that art crime extends into the higher levels of organized crime. Thus, art crime was deemed an issue of national importance.¹⁹

LOCAL OPPORTUNITY

While major and newsworthy crimes associated with great works of art intrigue the media, as well as museums and galleries, an important domestic dimension to the problem also exists. Most instances of theft reported to local U.S. law enforcement agencies occur on a much smaller scale. Thus, the importance of the crime often remains underappreciated, despite remaining worthy of local attention. Surely, assaults, robberies of financial institutions, or crimes directed against individuals are critical, but it also is important not to lose sight of the significance of crimes directed against cultural property.

Early American artifacts, antique firearms, historic documents, library collections, or items of local history, as well as public art and works of less well known artists, represent the history and culture of a



Works by noted artists—for example, Thomas Moran—have substantial financial and historic significance.

local community. Thefts of such items for personal collections or conversion to cash have a local, if not national, impact.²⁰

Recognizing this reality and the opportunity for local law enforcement cooperation, The Ohio State University Department of Public Safety (OSUDPS) and the Columbus, Ohio, Division of Police (CPD) began a joint initiative in 1997 to present programs about crimes against cultural property to members of local security organizations and neighborhood and business communities. Works of art and historic artifacts were identified in public buildings, corporate boardrooms, libraries, religious centers, and other places not previously of interest to law enforcement. Program attendees

mentioned that collectibles in homes and works by local artists recognized nationally had a significant dollar value. The program successfully raised awareness. Inventories, documentation of collections, photographic records, and security devices were implemented to ensure that these items would remain available for future generations.

The number of undocumented valuable works identified on college campuses continues to be amazing. Works by famous artists valued in hundreds of thousands of dollars continue to be identified, recorded, and protected.²¹ While collections in rare book libraries, art galleries, and museums generally are well-known, other art and cultural property often is found

in unsuspecting places in the community.

LOCAL IMPACT

What does cultural property loss look like at the local level in the United States, and how do police officers or deputies working at the city, county, or state level view and understand it? Except for those in major cities on the East and West Coasts, most law enforcement agencies do not have a dedicated art theft investigator. A uniformed patrol officer usually responds first and conducts the initial investigation. More commonly, reports are made on the loss of coin collections, antiques, sports memorabilia, or irreplaceable musical instruments, rather than on paintings or sculptures. A recent trend involves unwitting

thieves taking public art pieces solely for the value of the scrap metal, not for their artistic or cultural worth.

The original program partnership between OSUDPS and CPD brought these issues to the working level for patrol officers and detectives. By digging through case files, the local impact became clear. The following cases provide some obvious and interesting examples.

In a crime bulletin issued by CPD's Crime Analysis Unit, agencies in the area learned of the MO of a burglar targeting antique malls. The suspect hid in the building after closing hours, then forced entry into display cases. This individual seemed selective with specific likes. The list of stolen items included a *carte de visite* (card of visit) depicting a small photograph of Abraham Lincoln's casket at the Ohio State House and bearing the name of a Circleville, Ohio, photographer on the back. Also taken were two OSU vs. Michigan tickets from the 1920s and three OSU football team photo postcard sets from the early 1900s.²²

The OSUDPS/CPD cultural property awareness program recognized crime analysts as a critical link in agencies where these positions exist. One analyst who attended the training program also happened

to play music professionally. With the cultural property training, analytical expertise, and a special interest in music, the reported theft of a trumpet from a hotel luggage storage area caught his attention. No one witnessed the incident, and no physical evidence (this occurred before widespread application of video monitoring systems) existed, so solving

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The recovery rate for stolen art items remains particularly low, in some cases as low as 2 to 6 percent.

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the crime proved challenging. Reports of this type typically would be filed with little or no investigative follow-up in many agencies. However, the analyst recognized the victim as a renowned trumpeter and jazz pioneer. The instrument certainly was irreplaceable to the victim and, in the estimation of some, priceless. The value bestowed on the stolen trumpet as an item of cultural interest made the report and investigation a higher priority. Added work by

a crime analyst led to a successful recovery.²³

A local art gallery specializing in glass sculptures reported to the CPD the shoplifting theft of a work described in the offense report as similar to a glass ball or egg and valued at \$1,200. With video evidence and a suspect description, a detective investigated the incident. The detective began checking pawn shops for possible leads on fencing sources. A cooperative pawn shop owner admitted to recently accepting a unique piece of art glass but instead of placing the item for sale held it off the books for his own personal collection. On inspection, the art piece differed from the one reported stolen. Going back to the gallery to try and reconcile the report, gallery personnel revealed to the detective that they lost another, more expensive, piece—a glass sculpture valued at over \$40,000. The gallery owner explained that he did not want the theft publicized. More likely, the dealer intended to pursue his own efforts to recover the missing piece without involving local law enforcement. Reluctance also may have resulted from insurance issues because this was the third theft from the gallery in less than 12 months.²⁴ One observation since the OSUDPS/CPD program was conducted in 1997 is that without top-down understanding of

cultural property protection issues, art theft will not become a priority at the local level unless a significant loss occurs in the community.

CONCLUSION

Until local law enforcement gives more special attention to cultural property crime, hopefully, a member of each department will find it as a challenge of interest. Joint initiatives with universities, museums, law enforcement agencies, and experts in the local art community will help ensure that America's cultural heritage will continue. The theft of important international or local works of art and religious artifacts damages the nation's knowledge and appreciation of its cultural heritage. While largely an international challenge, there remains a local opportunity for law enforcement to help protect America's heritage. ♦

Endnotes

¹ U.S. Department of Justice, U.S. National Central Bureau of Interpol, Cultural Property Crimes Program, http://www.justice.gov/usncb/programs/cultural_property_program.php (accessed June 8, 2011).

² This information was culled from the Carabinieri's self-published annual yearbook for internal distribution and the media, in addition to numerous interviews with Colonel Giovanni Pastore and Colonel Luigi Cortellesa, the former and current vice commandants of the art squad, respectively.

³ "Kunst als Terrorfinanzierung," *Der Spiegel*, July 18, 2005, <http://www.spiegel.de/spiegel/print/d-41106138.html> (accessed July 11, 2011).

⁴ *Blood Antiques*, Journeyman Pictures, 2009.

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Badge of the Carabinieri Art Squad

⁷ Charney, "Art Crime in Context."

⁸ Jumana Farouky, "Spirited Away: Art Thieves Target Europe's Churches," *Time*, January 10, 2008, <http://www.time.com/time/nation/article/0,8599,1702155,00.html> (accessed July 11, 2011).

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¹⁶ Sandra Laville, "Met's Art Theft Squad Has to Go Cap in Hand," *The Guardian*, April 21, 2007, <http://www.guardian.co.uk/uk/2007/apr/21/ukcrime.artnews> (accessed July 12, 2011).

¹⁷ Derek Fincham, "Scotland Yard Halves Art and Antique Squad Funding," Illicit Cultural Property, entry posted April 23, 2007, <http://illicit-cultural-property.blogspot.com/2007/04/scotland-yard-halves-art-and-antique.html> (accessed July 26, 2011).

¹⁸ The Carabinieri annual yearbook.

¹⁹ Martin Finkelnberg, interview by author, first published in *The Journal of Art Crime* (ARCA, Fall 2010).

²⁰ Christopher Reed, "Picking Harvard's Pocket," *Harvard Magazine*, May-June 2000.

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²² Based on Columbus Police Division investigations.

²³ Bill Mayr, "Thieves Hit A Sour Note with Musician," *The Columbus Dispatch*, July 31, 2001.

²⁴ Based on Columbus Police Division investigations.

Count Your Blessings

For of those to whom much is given, much is required.
— John F. Kennedy¹

Law enforcement executives constantly seek ways of improving their motivational skills and helping those they lead to appreciate the profession of policing and serving the public. At first glance, this task does not appear difficult. After all, a career in law enforcement offers many positives. Officers gain a sense of purpose and an opportunity to protect and serve the general public, often as the last line of defense against criminal and terrorist elements. In addition, they have the ability to earn an honest living, as well as a retirement pension.

However, as with many things in life, motivating and inspiring the rank and file of policing is not as easy as it would seem. Without a doubt, the everyday pressures of being on the job and dealing with people who commit their lives to dishonest endeavors and criminal intent can have a negative effect on the outlook and motivation of even the most optimistic among us.

Yet, every once in a while, someone or something we encounter offers a powerful form of motivation and inspiration. These instances do not occur only on duty—they can happen in everyday life.

I recently experienced one of these uplifting, motivating moments at an unexpected time and place. On a cold and windy December day, I was walking out to Jones Beach on Long Island, New York, with a close friend. As we approached the boardwalk, we encountered two women. The first passed by without issuing a response to our greeting. But, the second approached me and relayed a concise story about a small, tearful boy and his uncle, who were following close behind her. She informed me that the 4-year-old boy was the victim of a car bombing in Iraq about a year earlier and that he lost both of his parents in the incident. The explosion threw him from the vehicle and caused a power line to land directly across his face. The boy suffered severe damage to his face and now requires a trachea tube to breathe. The woman also

explained that the young boy was crying because his first-ever visit to the beach was ending too soon for his liking.

As the boy approached, the old adage “a picture is worth a thousand words” could not have been more on point. No words could describe the damage done to this young boy’s face by a cowardly act of terrorism. Although, obviously, many difficult challenges lay ahead for this youngster, the bitter cold, windy day at the beach clearly had brought him much joy. This experience caused self-reflection and consideration on my part regarding the important things in life. This young boy, through no fault of his own, was dealt a difficult hand by life. Yet, despite visiting a deserted beach in poor weather conditions and without any other kids or sand toys to play with, he somehow appreciated the simple joys the beach had to offer.

This brief encounter with a young boy who remains nameless to me provoked many thoughts about life and appreciating it. We all lose our way sometimes and see only our difficulties. When this happens, we can be world-class complainers. Some of us even deflate the morale of others and lose track of our many blessings. We become oblivious to the fact that we belong to an exclusive fraternity of those who have served in the greatest profession ever known to mankind. From this day forward, if I start to lose my appreciation or motivation for life or my career field, I simply will think of this remarkable boy. ♦

Endnotes

¹ Retrieved from <http://quotationsbook.com/quote/44780/>. President-elect John F. Kennedy, address to the Massachusetts legislature, January 9, 1961, quoting from Luke 12:48.

Special Agent Kevin J. Crawford, an instructor in Community Leadership Development at the FBI Academy, prepared this Leadership Spotlight.

Notable Speech

Be a Lion

By Steven R. Casstevens



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Over 34 years ago, I made a critical choice in my life. I chose a profession in law enforcement. It is a choice that I did not take lightly. It also is a choice that I have not regretted one single day of my career. I have been lucky enough to rise through the ranks and have been honored to work for and with extraordinary groups of people. I have been blessed with many years of satisfaction in a lifelong commitment to public service. I would like to share some tidbits of advice for you that I have learned over these years of service.

Throughout these years, I have seen great joy, deep sorrow, and every imaginable emotion in between. I have saved the lives of gunshot victims and people crushed in vehicle crashes. I have had

Chief Casstevens of the Cary, Illinois, Police Department delivered this keynote speech to the graduating recruit officer class at the Suburban Law Enforcement Academy, College of DuPage, Glen Ellyn, Illinois, on September 23, 2011.



the satisfaction of arresting many people who were just plain evil.

However, these encounters have been offset by the many more wonderful members of our society whom I have met. I have had to deliver the difficult message to family members that a loved one was killed. I also have delivered the message of life. I have searched for hours for a lost child and have searched for years for the answer as to why bad things happen to good people. I have done my best to be the best, and, hopefully, along the way, I have made a difference in this world.

While I always have taken this job seriously, I have been smart enough to not take myself too seriously. Laughter is extremely important in life. Enjoy it. Do not let frustrations of the job come home with you.

You will meet many people in your career. While safety always should be priority one, not everyone is out to hurt you. There are many people who like and respect the police. Remember to treat people as you would want your wife, mother, son, or daughter treated by the police. It is easy to become frustrated when people do not treat you with respect and, instead, ask you the age-old question, Don't you have anything better to do? Do not fall into that trap—there are a lot of good people out there.

A colleague of mine once shared with me, "We don't believe in the old adage that the customer is always right. We believe that sometimes the customer is wrong. However, we believe they are allowed to be wrong with dignity." Motorists you stop might be wrong, but they should be allowed to be wrong with dignity.

Take the time to smile and enjoy the job. Remember that time is like a fine wine—enjoy every

drop because it is finite and, once consumed, never can be returned to the bottle. Always be prepared for your job. Every day.

Abraham Lincoln once said, "If you give me 6 hours to chop down a tree, I will spend the first 4 sharpening my axe." Never stop learning; law enforcement and court decisions affecting the way we do business change almost daily. Learn from the mistakes of others. You cannot live long enough to make them all yourself. Continue to train and add "tools" to your law enforcement "toolbox"

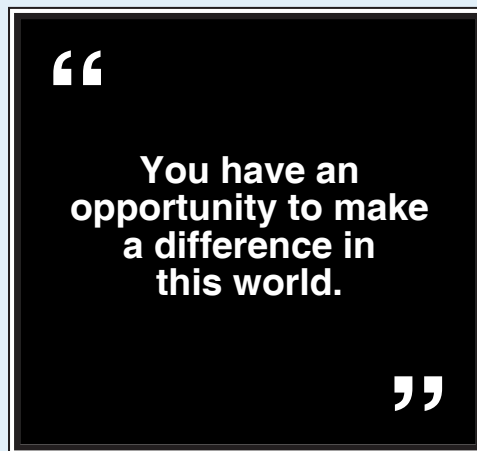
because if the only tool in your toolbox is a hammer, every problem starts to look like a nail. Learn from your training officer and your supervisors. They have learned a great deal that cannot be found in a book or training manual from their years of experience.

They also will tell you to be careful, not only in dangerous situations but in the everyday decisions that you make. If you think that something you are about to do might get you into trouble, it probably

will. Remember that if there is any doubt, then there is no doubt.

You are now entering a turning point in your lives. You have an opportunity to make a difference in this world. You are going forward to carry the torch for what I believe to be the most noble profession on earth. You have just opened a large door to a long-lasting career as one of America's finest. There are many hallways to enter that will lead you in many directions as you walk through that door. Choose your hallway carefully. Look to the future—not just a year from now, but 5, 10, 20 years ahead. Contemplate wisely where you wish to be when you are considered a veteran.

Remember that you will wear numerous hats in your career, not always those of a police



officer, detective, or undercover officer but those of a problem solver, preacher, negotiator, teacher, parent, medic, mediator, and marriage counselor. You will be expected to solve everyone's problems within an 8-hour shift while oftentimes barely having enough time to deal with your own.

Be safe in your daily charge. Protect those whom you are sworn to protect. Remember that crime does not recognize jurisdictional boundaries, political pressures, or departmental policies. Always remember the Law Enforcement Oath of Honor, which says:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the Constitution, my community, and the agency I serve.

So, be fair and impartial, but, above all, remember to be human.

Wear your uniform proudly, and do not dishonor it for there are over 19,000 names of men and women who gave their lives for it etched in granite on the National Law Enforcement Officers Memorial (NLEOM) wall in Washington, D.C. Remember always to wear your seat belt! More police officers are killed every year in traffic crashes than by any other means.

Be a professional. Remember that character, integrity, and respect are not your right to possess—they must be earned. Remember that character often is revealed in the little things, like who you are and how you conduct yourself when no one is watching. In describing officers in the preface to her book *Brave Hearts*, author Cynthia Brown said:

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**...character often
is revealed in the
little things....**

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They share a passion for their work and a conviction that they are doing something important with their lives. Despite the constant exposure to America's dark side, they all view their work as a privilege and a job they are lucky to have.¹

Do not be swayed by the cynicism of others in your mission. While we cannot change the direction of the wind, we can adjust our sails. Do not become pessimistic. Walk proudly and with dignity, for pessimism is for the faint of heart, and dignity is not negotiable.

By your presence here you have joined hands with the largest brother- and sisterhood on earth, with a bond that cannot be broken. You most likely are familiar with the Thin Blue Line, a symbol for law enforcement everywhere. The blue represents officers and the courage we find when faced with insurmountable odds. The black represents a constant reminder of our fallen

brother and sister officers. And, The Line is what law enforcement protects—the barrier between order and chaos, between decency and lawlessness. This symbol represents the camaraderie that law enforcement officers all share, a brotherhood like no other.

As stated in the Bible in Proverbs 28:1 and also on the wall at the NLEOM: “The wicked flee, when no man pursueth, but the righteous are bold as a lion.” So, I challenge you to be a lion. Go forward from here and become proud new members of the Thin Blue Line. Thank you. ♦

Endnotes

¹ Cynthia Brown, *Brave Hearts: Extraordinary Stories of Pride, Pain, and Courage* (Bloomington, IN: Xlibris, 2010).

Attention

*Violent Crime, Homicide,
Cold Case, and Crime
Analysis Units*

Unsolved Homicide Linda Muegge



On May 14, 2007, at approximately 8:00 p.m., emergency personnel arrived at the scene of a house fire at 506 Franklin Street, Fredericksburg, Texas, and discovered the body of Linda Muegge, a 55-year-old white female. Muegge was severely burned and found lying face down under a large amount of debris, which had fallen from the ceiling. She had stab wounds and blunt-force injuries on her head and neck.

A knife was found in the living room, where the fire is believed to have been ignited by an accelerant. Muegge's underwear was down around her knees, but there were no signs of a sexual assault. In addition, a large sum of money was left in the house; however, the victim's cell phone, wallet, and car keys never were located.

Two past incidents of possible interest involving Muegge occurred in the years prior to her murder. On September 3, 2003, she

reported a suspicious white male in his 50s named Frank whom she had met through a friend. The report indicated that she did not feel comfortable with this man on her property, but no documentation of further information or reports exists. Separately, on February 12, 2006, Muegge reported that two of her bottle-fed sheep had been shot. It later was determined that the sheep had been shot with a .22-caliber rifle.

To provide or request additional information related to this case, please contact Sergeant Terry Weed of the Fredericksburg, Texas, Police Department at 830-997-7585 or tweed@fbgtx.org or the FBI's Violent Criminal Apprehension Program (ViCAP) at 800-634-4097 or vicap@leo.gov. This and other ViCAP Alerts can be reviewed at <http://www.fbi.gov/wanted/vicap>. Contact ViCAP for information on how your agency can obtain access to the ViCAP Web National Crime Database and view this case. ♦

The Disease of Certainty

By Everett Doolittle, D.P.A.

CRIME SCENE DO NOT CR

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I have had great opportunities over my many years in law enforcement. I have served as a police officer, a deputy sheriff, and even the chief deputy, but I found my greatest career opportunity at the Minnesota Bureau of Criminal Apprehension (BCA). At BCA, I tackled my most challenging assignment when I led the Cold Case Unit (CCU).

Early in my career, I gained valuable experience by working on homicide teams. But, studying the errors of others and reworking an old case granted me even greater insight into why cases fail. This article describes one of the major sources of these investigative errors: a phenomenon I dubbed the “Disease of Certainty.”

Dr. Doolittle retired from the Minnesota Bureau of Criminal Apprehension and currently serves as an associate professor in the School of Law Enforcement and Criminal Justice at Metropolitan State University in St. Paul, Minnesota.



The Disease of Certainty is fatal to investigations. Both inexperienced and seasoned officers can catch this contagious disease, and it can spread throughout a team. It occurs when officers feel so convinced of their own beliefs that they allow themselves to become tunnel-visioned about one conclusion and ignore clues that might point them in another direction. Those who resist the disease may be ridiculed and ostracized for their supposed lack of understanding and inability to see the truth if all of their coworkers share the same beliefs and assumptions about the investigation.

The numerous cases that CCU worked over the years taught us many lessons about the Disease of Certainty. For clarification, when I refer to the BCA CCU, I include all members of the BCA team (agents, analysts, forensic scientists, and support personnel) and the local and county investigators who assist these investigations. Cold case investigations demand a multiagency approach to solve a difficult problem, so a diverse set of personnel with varying expertise comprise the team.

By describing what I have learned about the Disease of Certainty, I do not aim to demean the work of the initial agencies involved, but to help others avoid the same mistakes in the future. I want to eliminate this deadly disease of perception that can prevent investigators from seeing beyond their own assumptions. All of these cases involved dedicated and professional individuals, but fatal errors occurred nonetheless. CCU does not aim to judge the initial investigators but to work with the agency as a team to reinvigorate

the investigation. One person or agency never deserves all of the credit for cracking a case because it demands a true team effort.

A Case Study

My work with CCU began with numerous rape and assault cases, but I will focus on a series of homicides. The first of the confirmed homicides occurred in December 1978. As the Huling family slept in their secluded rural farm house north of the Twin Cities (St. Paul and Minneapolis) in Minnesota, an intruder entered their home. Be-

fore leaving, the intruder viciously murdered Alice Huling and three of her children—miraculously, one survived.

Several other seemingly unrelated crimes occurred over the following year. The next one took place in May 1979 when Marlys Wohlenhaus came home from school. A few hours later, her mother returned from errands and found Marlys severely beaten and unconscious. The girl was

pronounced dead 2 days later. Next, in the following months, a young woman disappeared after leaving a restaurant. Though her car quickly was discovered near the Mississippi River, her body was not found for another 5 years. Yet again, soon after, a young girl left another restaurant where witnesses saw her forced into a vehicle, and her body was found days later.

These cases shocked the surrounding communities. However, because no apparent relationship existed between the crimes, the police departments investigated them individually. Several independent investigations continued for many years. In each of the cases, police identified a

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Both inexperienced and seasoned officers can catch this contagious disease, and it can spread throughout a team.

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different prime suspect who became the central focus of the investigation.

The Disease Defined

To understand the seriousness of this issue, I need to explain the investigative process and how problems can arise. There are two logical approaches to problem solving that investigators must understand and use effectively: deductive and inductive reasoning. Deductive reasoning results from the evidence that people see in murder-mystery movies—the smoking gun, witnesses, DNA, fingerprints, and other tangible facts and clues. With deductive reasoning, this evidence builds the foundation of the case, and everything comes together to point to one conclusion.

Unfortunately, most real-life investigations differ greatly from the ones seen on television. In many cases, investigators can gather little if any tangible facts or evidence, which leads to a difficult, complex investigation that quickly can become a cold case. In these instances, investigators must turn to inductive reasoning to evaluate possible directions and outcomes. Through inductive reasoning, or scenario-based logic, we determine possibilities and probabilities based on experience and intuition and then attempt to prove or disprove them. Investigators start with a simple question, for example: Who killed Marlys Wohlenhaus? Could it be her boyfriend? What would be his motive? Could it be her stepfather or the neighbor kid who lives down the block? What would be their motives? Investigators attempt to identify possibilities and eliminate them one by one until only the most probable solution remains.

To the seasoned investigator, this type of reasoning becomes the routine course of action.

These types of reasoning can go awry when in the mind of an investigator a possibility becomes the only reality. When officers become convinced of a certain solution, they may think that others who disagree with their answer simply do not understand. In most cases, experienced investigators' instincts are correct, and their prime suspect indeed committed the crime. Nevertheless, one always must keep an open mind to the facts that disagree with an initial assessment as probability does not

equate to certainty. Anyone can come to an incorrect first conclusion, especially when little or no straightforward evidence exists, and a conclusion is based mainly on conjecture.

The Case Resolved

In the serial murders outlined above, this Disease of Certainty led law enforcement personnel to disregard key information because it did not agree with their previous conclusions. However, when CCU reopened

the case, many new hypotheses developed, and answers were found among the volumes of information the initial investigators had gathered. As in many cold cases, this only could happen when some initial investigators were removed and new personnel were assigned to support the case.

Eventually, CCU solved these crimes by examining a suspect who quickly had been cleared in the initial investigation. This man was not an acquaintance, stepfather, priest, or deputy, but a stranger. Joseph Ture was a drifter who lived in his car at a rest stop about 4 miles from the Huling home. Four days after the murders, police arrested

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**...this deadly
disease of
perception...can
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Ture for an unrelated crime and found a ski mask, a club wrapped in leather, and a small toy car in his possession. These items became significant years later.

Two years later, in 1981, Ture was arrested and convicted of the murder of another waitress. While awaiting trial, he supposedly talked to his cellmate about his involvement in the murders of the Huling family and Marlys Wohlenhaus, and his statements were forwarded to law enforcement agencies. When officers questioned Ture, he maintained his innocence and claimed he was working at an automobile plant in St. Paul when the homicides occurred. The investigators contacted the plant and confirmed that a Joseph Ture was working on the assembly line at the time of the murder of Marlys Wohlenhaus. As a result, the officers eliminated Ture as a suspect.

When CCU personnel examined this case 20 years later, however, they reconsidered evidence, such as Ture's statements to his cellmate and the items he possessed at the time of his initial arrest. They double-checked Ture's alibi and realized that it actually was Joseph Ture, Sr., the suspect's father, who worked at the automobile plant at the time of the murder. Upon further inquiry, CCU members discovered other incriminating remarks that the suspect made to his cellmate. Ture divulged information that only someone with direct involvement in the crime would have known. Also, the team found that Billy Huling, the one surviving child of the Huling home, could identify the toy car found with Ture when he was arrested decades earlier; Billy and his brother, Wayne, had played with a similar one prior to the night their family was murdered.

This example illustrates how investigators can become too convinced of their own conclusions. Because Joseph Ture allegedly was working at the time of the Wohlenhaus murder, officers disregarded other significant evidence against him. Once CCU reexamined previously held truths about the case (such as Ture's alibi), they solved the crimes. This case has appeared numerous times on television.

Dangers of Overconfidence

Over the years, I have seen priests, deputy sheriffs, stepfathers, neighborhood kids, boyfriends, parents, spouses, and other innocent suspects become not only the focus of the investigation but the only possible answer in the minds of investigators. Once investigators develop this mind-set, it takes courage for others to stand up and disagree with the one perceived truth.

Also, this Disease of Certainty seriously can damage innocent individuals who mistakenly become the focus of the investigation. In some instances, little or no factual

evidence exists against a suspect, yet the police, community, and media all believe the individual committed the crime. Rather than grieving the loss of a friend, acquaintance, or loved one, the suspect must deal with being viewed as a criminal in the eyes of the public.

Investigators face the challenge of pursuing their work confidently and proactively, yet understanding that they can be wrong and that if they are their errors impact many people. In this way, officers hold much power and influence over the lives of others, and their ethics matter a great deal. Police may want to solve cases quickly by relying



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on their instincts and investigating aggressively, but they also have a duty to remain open-minded, fair, and thorough. Working cold cases, I have seen the conflicts that arise when these priorities fall out of balance.

CCU's success in identifying Ture as the murderer in no way detracts from the competency of the original investigators. But, to combat the Disease of Certainty, agencies must remember that personnel assigned to a particular case do not "own" that investigation. In the serial murders described above, the initial investigative teams included experienced officers who had long records of success, yet their experience may have contributed to their failures. These errors, while understandable, may not have occurred had the investigators not formed such strong beliefs of who committed the crimes. Experienced investigators draw on their past successes, which may blind them to unexpected possibilities.

A Wide Perspective

Many of the cases worked by CCU, like the Wohlenhaus and Huling murders, involved talented and dedicated personnel who focused too narrowly on one hypothetical conclusion. One incorrect hypothesis should not jeopardize an entire case. Every investigation reveals several paths that can lead in any number of directions, and, if it dead-ends, investigators need to turn around and try a new one. Problems arise, however, when police venture down the wrong path and refuse to see that they are going in the wrong direction.

Once investigators develop this fixed mind-set, they filter out information that disagrees with their

conclusion and only see the evidence that supports their answers. I have observed this phenomenon often while managing multiagency task forces and referred to it as the "Don Quixote Effect." Don Quixote, a famous literary hero, mistakenly battled windmills because he believed so strongly that they were giants. This idea resonates in Thomas Kuhn's 1962 book, *The Structure of Scientific Revolutions*, which discusses the difficulties experienced by scientists when they discovered information that disagreed with their long-held truths or paradigms.

Overconfidence is not the only way that the Disease of Certainty can infiltrate an investigation. Sometimes, a lack of perspective leads the team awry. When investigators dig deeply into the facts of a case, they can become too focused on one suspect, one lead, or one piece

of information and lose sight of the bigger picture. This line of thinking caused investigators to mistakenly eliminate Joseph Ture as a suspect in the crimes described above.

When venturing into a densely wooded forest—it is easy to lose sight of the forest when surrounded by trees. Similarly, when officers become bogged down by puzzling information and unanswered questions, they may find it difficult to see the bigger picture of the case. Solving a difficult and complex investigation with keen inductive reasoning demands more than a team of dedicated personnel; it requires a leader. True leaders can see beyond disparate facts and seemingly unrelated evidence to view the whole "forest," and they have the courage to tell others when they are heading in the wrong direction.

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Police may want to solve cases quickly by relying on their instincts and investigating aggressively, but they also have a duty to remain open-minded, fair, and thorough.

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Conclusion

Because the Cold Case Unit receives cases after a significant amount of time has passed and all initial leads have been exhausted, it brings a fresh perspective to the puzzle. CCU's investigators are not the same team of officers who responded to the scene of the crime, interviewed witnesses, interacted with a grieving family, and felt the pressure of media attention that surrounds high-profile cases; because of this, they may provide a new approach missing from the initial investigation.

Additionally, because CCU receives cases that stumped a dedicated team of investigators, cold case officers know they must consider "out-of-the-box" solutions and, thus, are less susceptible to the Disease of Certainty. A unit, such as ours at BCA, can provide this service for any agency willing to challenge experienced investigators' long-held beliefs and dig into old cases. Agencies must remember that even their most talented officers can fall victim to overconfidence, and this Disease of Certainty may have caused errors in cold cases that still can be resolved. ♦

FBI Law Enforcement Bulletin Author Guidelines

Length: Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

Format: Authors can e-mail articles. To send by mail, authors should submit three copies of their articles typed and double-spaced on 8 1/2-by-11-inch white paper with all pages numbered. An electronic version of the article should accompany the typed manuscript.

Criteria: The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines. Because it


is a government publication, the *Bulletin* cannot accept articles that advertise a product or service. To ensure that their writing style meets the *Bulletin's* requirements, authors should study several issues of the magazine and contact the staff or access <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin> for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques. The *Bulletin* will advise authors of acceptance or rejection but cannot guarantee a publication date for accepted articles, which the staff edits for length, clarity, format, and style.

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Focus on Training

Training for Deadly Force Encounters

By Timothy Hoff

A person wearing a black tactical helmet and a clear face shield is holding a black and orange handgun. They are positioned in front of a white door, looking through a crack. The person's face is partially visible through the face shield.

For firearms instructors, it does not suffice to simply teach fellow law enforcement officers how to shoot. Each officer must master important fundamentals of marksmanship, such as grip, stance, sight picture, sight alignment, and trigger control. The duties of instructors include more than teaching students to hit a bull's-eye. Instructors must prepare them to survive deadly force encounters, or, in other words, to win a gunfight.

CHALLENGES

It is widely recognized that firearms qualification courses do not fully represent a real-world gunfight. Qualification courses measure officers' ability to apply the fundamentals of marksmanship, but with no one shooting back. Traditional

flat-range drills help officers develop basic weapon handling skills, such as the draw and reloads, some of which also are tested during qualification courses. Mailboxes, automobiles, and other props can be positioned on the range to teach officers to seek and shoot from positions of cover and concealment. Reactive steel targets, especially dueling trees, can create safe, simulated "gunfights" in which two officers shoot against each other. These head-to-head competitions create stress by pushing the officers to shoot quickly and accurately.

Even more so than these tactics, shoot houses provide one of the best instruction tools to prepare officers for the threats they will encounter on duty. A shoot house allows instructors to teach law enforcement techniques, such as how to enter

A student uses a limited pen to cover a hallway while his team clears the room behind him.

and clear rooms, hallways, and stairways, as well as team tactics. Shoot houses may be constructed to allow live-fire training with either simulated or actual duty weapons. The walls of live-fire shoot houses may be built from used car tires filled with sand or ballistic steel walls covered with wood. Top-of-the-line shoot houses even offer moveable walls so the interior layout can be tailored to the mission. The more realistic the environment, the greater the training benefit. A shoot house proves valuable because it helps teach officers how to minimize risk to themselves during violent encounters. Officers learn tactics to clear rooms, hallways, and stairwells while decreasing their exposure to potential threats. They also build confidence by working as a team.

Unfortunately, high start-up costs pose the biggest obstacle for developing shoot house training programs. Well-equipped shoot houses can be expensive, especially ones that incorporate multiple rooms, hallways, and stairs. The budget cuts and layoffs of today's economic climate make funding difficult. Additionally, local zoning ordinances can cause difficulties for departments seeking to build one of these facilities.

SOLUTIONS

Fortunately, the FBI's Detroit, Michigan, office identified a solution to develop a real-world tactical training program, even under these constraints. FBI Detroit does not possess its own shoot house; in fact, most FBI field offices do not own a dedicated house for conducting force-on-force or scenario-based tactical training. However, this did not prevent the agency from delivering high-quality, realistic training to its agents, as well as other officers. By partnering with the city of

Dearborn, Michigan, FBI Detroit provides instruction for deadly force encounters for agents and task force officers, using residences complete with kitchens, bathrooms, stairs, and basements.

This program became possible when Dearborn's city government implemented a program to improve neighborhoods and maintain property values. As part of this initiative, the city purchased vacant properties, both single- and multifamily residences, in local neighborhoods, all of which had been marked for demolition. Some were allocated to local arson

investigators to conduct burns for their own training programs. FBI Detroit realized that if the fire department can burn down a house for training purposes, then, perhaps, one of these vacant properties could provide a safe place to conduct firearms training. Fortunately, the mayor's office, city council, and building department agreed, and they enthusiastically supported the FBI's request to use the city's property.

Clearly, a city-owned property presents some limitations. First, as the house is located in a residential neighborhood, instructors cannot incorporate exterior tactics into the training; during the program, instructors cover most of the windows to prevent outsiders from observing the techniques, tactics, and procedures. Second, the house is not located at or near the division's firearms range. As such, the training cannot be conducted very frequently, whereas a dedicated shoot house would make it possible to incorporate high-quality tactical training into every firearms training session. Third, a dedicated shoot house would allow trainees to use actual duty weapons. However, given the cost savings and other benefits of using city-owned residences, they provide a viable option for live-fire training programs.

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...shoot houses provide one of the best instruction tools to prepare officers for the threats they will encounter on duty.

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Students move toward the living room while an instructor watches. The house presents multiple danger areas for students to address even though there is no furniture.

Equipment

In FBI Detroit's training program, officers and role players each are armed with realistic training weapons and ammunition. Role players carry guns that produce a loud realistic gunshot sound when they are fired; it is important for role players to fire a weapon that makes a loud noise so that if they surprise students in an ambush, the officers will respond to the sound of the blast. Students' guns closely resemble the look and feel of the standard-issue weapons for agents and task officers in FBI Detroit, which provides a significant benefit to the trainees.

Training House

After securing the use of the two-story, single-family residence, instructors developed the curriculum and planned the actual training scenarios. The primary objective is to refine agents' ability to clear a location using the techniques that they learned at the academy. The house provides numerous opportunities for agents to practice these skills.

To this end, this borrowed residence provides the additional benefit of more closely resembling the circumstances that agents will encounter on the job as most shoot houses only consist of one story and use simplified floor plans.

The instructors emphasize how to enter rooms properly and highlight the importance of visually clearing all areas prior to entry. Realistic photo targets and role players act as the officers' subjects during the scenarios. Professional support employees volunteer to serve as role players, but on most training days, only one or

two role players are available. The photo targets supplement the role players, but they provide another advantage, as well—paper targets can be positioned in places where agents need to shoot at a close distance, such as just inside a doorway or closet.¹

Trainers structure the exercises to position the agents for success. As such, they design every scenario so that agents successfully can complete the mission without firing any shots. The instructors strategically place the role players in spots where they anticipate the students might make mistakes; trainers instruct the role players to comply with the agents' commands, but not to react automatically. The students aim to locate the role players with proper clearing techniques, eliminating the need for an ambush. However, if the agents turn their backs on role players' locations or fail to clear the areas where role players hide, the role players can fire their guns to alert the agents to their mistakes.

Student Lessons

Many training groups use the appropriate tactics to successfully identify the role players, call them out of their hiding places, and secure them in a safe location, all without firing a shot. If an ambush occurs, the instructors quickly stop the scenario and discuss what mistakes led to the shooting. Then, the students reset and attempt to complete the scenario without firing their weapons. This structure illustrates that students can achieve the desired training results without firing a barrage of plastic bullets and BBs.

Of course, this program does not imply that officers never will be involved in shootings if they receive this training. Ultimately, the subject decides whether to peacefully comply with officers or fight them. Proper planning, such as ensuring superior manpower and firepower and using appropriate tactics, places maximum pressure on the subject to submit to the authority of law enforcement. Nonetheless, instructing officers on these techniques may help them avoid gunfire if possible.

Unlike typical shoot houses, the training house has bathrooms and a kitchen that agents have to clear. In several exercises, groups remembered to check the cabinets and other less obvious hiding places. However, a few groups ignored these danger areas despite reminders to clear all spaces large enough to conceal a two-legged threat. To emphasize this easy-to-overlook hiding place, one of the role players volunteered to hide inside a kitchen cabinet. It was a tight fit, but confirmed that this space was large enough to conceal a person. The role player waited until after the agents deemed the kitchen clear before emerging from the cabinet and opening fire on several trainees. Those agents

who were shot, even with a simulated gun that caused them no harm, learned a valuable lesson and likely never will clear a kitchen the same way again.

Instructor Learning

Not all the lessons have been learned by the students; the instructors have acquired valuable knowledge as well. One important lesson came during an exercise in which a role player hid in a hallway closet. The subject did not have a weapon, so he was not in a position to be shot. When a student opened the door and saw the role player, he was so surprised that he literally jumped. Witnessing the trainee's automatic reaction reminded the instructors about the importance of mental preparation and proper mindset. Initially, the instructors focused on the mechanics of law enforcement clears, but from that rotation on,

instructors stressed to students the mental importance of remaining alert to threats hiding in every cabinet, closet, or corner. The eyes see what the mind expects.

Safety Precautions

During these exercises, safety remains of the utmost importance. In the same week that FBI Detroit conducted training, an officer in another state died during a similar training exercise. The news reports indicated that a fellow officer wanted to demonstrate a technique to his colleagues during a break. Unfortunately, the officer performing the demonstration unknowingly picked up a live-fire weapon instead of a training gun, and he shot and killed his fellow officer. To prevent such tragic events from occurring, the lead instructor or a

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dedicated safety officer must prevent any ammunition or live-fire weapons from entering the training environment. Normally, officers learn never to point their weapon at another person unless the situation warrants it (e.g., for self-defense). However, these training sessions differ from standard law enforcement environments because students and role players are not only allowed but expected to point their weapons at another person to complete the scenario. As such, students, role players, and instructors alike must realize the significant risk that accompanies pointing a weapon of any sort at another person, even during a training exercise.

To increase safety even further, the FBI adopted a color-coding system for weapons. For example, guns marked with red are inert—the firing pin has been removed and the barrels have been plugged so that they cannot fire, but they are functional in every other respect. Orange designates simulated guns, which fire plastic marking rounds. The vendor who supplies these weapons agreed to apply orange paint to the slides and magazine floor plate for a minimal fee. This color-coding scheme reduces the likelihood of potentially tragic mistakes.

At the conclusion of training, it is the instructors' responsibility to make sure that officers return to duty with fully loaded, live-fire weapons. Incidents have occurred when students went back on patrol with training weapons still in their holsters. Fortunately, the color-coded weapons make it readily apparent when an officer does not have the proper equipment.

Results

It still is too early to fully measure the success of this training effort. The real test will be whether

or not the program makes FBI Detroit's agents and task force officers safer while they perform their duties, and that test does not end until the student retires. However, the course evaluation forms were overwhelmingly positive. The most common recommendation for improvement was to hold this type of training more often, which, in itself, indicates some level of success.

CONCLUSION

FBI Detroit's program demonstrates a strong example of how law enforcement agencies can deliver high-quality tactical instruction for deadly force encounters, even if they do not have sufficient funds to build a dedicated shoot house. Using city-owned residences provides a budget-friendly, effective way to deliver firearms training in a realistic environment.

No one location or facility will allow for training activities that encompass every potential situation that law enforcement officers will face. Ideally, agencies

can establish dedicated shoot houses or 180-degree shooting bays for officers to practice room entries with live fire. However, even if an agency has its own shoot house available, the use of commercial and residential buildings marked for demolition provides a low-cost way to develop realistic force-on-force training programs. ♦

Endnotes

¹ To ensure safety, agents should not fire a training gun at a role player without at least 3 feet of distance or else risk injury.

Special Agent Hoff serves as a firearms and defensive tactics instructor at the FBI's Detroit, Michigan, office.



Lantana, Florida, Police Fallen Officer Memorial

Lantana, Florida, is a small coastal community with 10,000 residents. After one of its police officers was killed in the line of duty in 2001, the police department awards committee began working on a memorial to fallen officers.

In 2003, after years of hard work and determination, the first pieces of granite arrived at the police department. On May 23, 2003, a groundbreaking ceremony was held for the Lantana Police Fallen Officer Memorial. Three years later on May 17, 2006, the police department dedicated the memorial to all officers who have given their lives in the line of duty.

Located between the Lantana Police Department and the town hall, a brick paved path leads to a granite structure with a spire and a fountain surrounded by flowers and shrubs. The trilevel fountain, contained within four pools, is based on the three phases of the cycle of life. On either side of the fountain, two stone monuments pay lasting tribute to the town's officers killed in the line of duty. Adjacent to the memorial is a bench dedicated to the victims of September 11.

Annually, citizens and law enforcement officers attend a special memorial service at the site. The Lantana Police Fallen Officer Memorial is open to the public 365 days a year. Everyone is welcome to pay tribute to the men and women of the Lantana Police Department who have made the ultimate sacrifice.

The Exigent Circumstances Exception After Kentucky v. King

By MICHAEL T. PETTRY, J.D.

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On a daily basis, law enforcement officers face situations requiring them to make split-second decisions under tense, uncertain, and often chaotic circumstances. Fortunately, courts, recognizing the realities of modern policing, have provided officers with the legal guidance they need to deal with myriad situations and also have ensured the protection of individual liberties. However, one issue that lacks a clear consensus is when and under what

circumstances police are permitted to rely upon the exigent circumstances exception to the Fourth Amendment's warrant requirement when their actions may have caused the exigency.

In its 2010 term, the Supreme Court in *Kentucky v. King* addressed this issue and in doing so provided law enforcement officers with clear guidance as to how they properly can handle some of the most important issues they confront every day.¹ This article will

examine the legal issues implicated by the holding in *King*, lower courts' previous treatment of this issue, and an explanation of the legal standard the Court set forth for officers confronted with situations requiring immediate entry into areas protected by the Fourth Amendment.

Constitutional Protections

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”² Thus, the text of the amendment offers two distinct requirements regarding searches: 1) they must be reasonable and 2) a warrant may not be issued unless probable cause is established and the scope of the search is specified with particularity. Although the amendment does not specifically state when and under what circumstances a warrant must be obtained, the Supreme Court has indicated that “searches and seizures inside a home without a warrant are presumptively unreasonable.”³

Exigent Circumstances Exception

In spite of the presumption that a police officer’s entry into a home without a warrant is unlawful, both state and federal courts have carved out a number of exceptions to this general rule. Included among the judicially recognized exceptions to the Fourth Amendment’s warrant requirement is the exigent circumstances exception. The U.S. Court of Appeals for the First Circuit in *United States v. Rengifo* indicated that “[e]xigent circumstances occur when a reasonable officer

could believe that to delay acting to obtain a warrant would, in all likelihood, permanently frustrate an important police objective, such as to prevent the destruction of evidence relating to criminal activity or to secure an arrest before a suspect can commit further serious harm.”⁴

Police-Created Exigency Doctrine

Although the Supreme Court recently had provided clear guidance to law enforcement officers regarding the circumstances under which they could make a warrantless entry of a dwelling to render emergency aid, it had yet to address the specific issue of whether the exigent circumstances exception to the Fourth Amendment’s warrant requirement applies when police officers’ actions

cause the exigency.⁵ Under this so-called police-created exigency doctrine, a number of lower courts had held that officers could not rely upon this exception if they had created the very exigency which they sought to use to justify acting without a warrant.⁶ Other courts did not find a Fourth Amendment violation simply on the grounds that officers created the exigency.⁷

Given the context in which the issue may arise, this left law enforcement in a difficult predicament given the unsettled nature of the law. The Supreme Court’s decision in *King* provides welcome clarification of the circumstances under which law enforcement is permitted to rely upon the exigent circumstances exception.

In *King*, officers in Lexington, Kentucky, arranged for the

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The Supreme Court’s decision in King provides welcome clarification of the circumstances under which law enforcement is permitted to rely upon the exigent circumstances exception.

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Special Agent Pettry is a legal instructor at the FBI Academy.

controlled purchase of crack cocaine outside of an apartment complex.⁸ After completion of the deal, an undercover officer monitoring the transaction from a nearby location instructed the uniformed officers with whom he was working to apprehend the suspect. The undercover officer informed his fellow officers that the subject was moving quickly toward the breezeway of a nearby apartment building and that they should “hurry up and get there” before the individual entered an apartment.⁹

After receiving the undercover officer’s radio transmission, the uniformed officers drove into the nearby parking lot, exited their vehicles, and ran to the breezeway. As they entered the breezeway, the officers heard the sound of a door shutting and detected the strong odor of burnt marijuana. At the end of the breezeway, the officers discovered that there was an apartment on each side of the hallway. Although the undercover officer who had been monitoring the transaction had alerted the uniformed officers that the subject had entered the apartment on the right, the officers could not hear the transmission as they already had exited their vehicles. The officers focused their attention on the door on the left side of the breezeway as it appeared to be the source of the pungent odor.¹⁰

The officers then banged on the door “as loud as [they] could” and stated words to the effect of “This is the police” or “Police, police, police.”¹¹ One of the officers later testified at a suppression hearing that as soon as they announced their presence, they could hear people inside the apartment moving and sounds that appeared to reflect that items within were being moved.¹² Believing that the

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In holding that the exigent circumstances exception applies as long as the police do not gain entry...by means of an actual or threatened violation of the Fourth Amendment, the Court eliminated... confusion....
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sounds indicated that drug-related evidence was about to be destroyed, the officers announced that they “were going to make entry inside the apartment.”¹³ One of the officers kicked in the door, and they entered.

Once inside, the officers encountered three people in the front room, including the defendant, Hollis King.

While performing a protective sweep of the apartment, the officers saw marijuana and powdered cocaine in plain view. A subsequent search yielded additional drugs, cash, and drug paraphernalia.¹⁴

Following his indictment for drug-related offenses, King filed a motion to suppress the evidence seized by the officers following their warrantless entry into the apartment. Both the trial court and the Kentucky Court of Appeals overruled his motion.¹⁵ However, the Supreme Court of Kentucky reversed the lower courts, finding that although the officers did not act in bad faith in entering the apartment, the exigent circumstances exception could not justify the search because it was reasonably foreseeable that the occupants would destroy evidence when the police knocked on the door and announced their presence.¹⁶

In reaching its decision, the Kentucky Supreme Court adopted a two-part test.¹⁷ The first prong required courts to determine “whether the officers deliberately created the exigent circumstances with the bad faith intent to avoid the warrant requirement.”¹⁸ If so, they would be prevented from relying on the resulting exigency to justify the warrantless entry.¹⁹ Even if it was shown that the police had not acted in bad faith, the second prong of the

test required courts to examine whether “it was reasonably foreseeable that the investigative tactics employed by the police would create the exigent circumstances relied upon to justify a warrantless entry.”²⁰ If the officers’ tactics had created the exigency, the warrantless entry would be unjustified.²¹

The Commonwealth of Kentucky appealed the decision to the Supreme Court, which agreed to hear the case. At the outset of its analysis of the case, the Supreme Court noted that the Fourth Amendment’s warrant requirement is subject to certain exceptions, such as when “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.”²² One such exigency would be the need to prevent the “imminent destruction of evidence.”²³

Although this specific type of exigency has long been recognized by the judiciary, many courts have held that it should not apply in situations where the police “created” the exigency to justify acting outside of the judicial process.

As the U.S. Court of Appeals for the Sixth Circuit stated in its decision in *United States v. Chambers*, “for a warrantless search to stand, law enforcement officers must be

responding to an unanticipated exigency rather than simply creating the exigency for themselves.”²⁴ Similarly, the U.S. Court of Appeals for the Fifth Circuit noted in *United States v. Gould* that “although exigent circumstances may justify a warrantless probable cause entry into the home, they will not do so if the exigent circumstances were manufactured by the agents.”²⁵



Although courts had held that officers could not rely upon the exigent circumstances exception to the warrant requirement if they had created the exigency, they recognized that something more than a general fear of detection or discovery by the police must have caused the destruction of evidence. As the U.S. Court of Appeals for the Eighth Circuit observed in *United States v. Duchi*, “in some sense the police always create the exigent circumstances that justify warrantless entries

and arrests. Their discovery of the criminal causes him to flee; their discovery of the contraband causes the criminal’s attempt to destroy or divert the evidence.”²⁶ The Supreme Court recognized this common sense principle in its opinion in *King* by noting that individuals engaged in illegal activity often will destroy evidence if they have concerns that it will be recovered by law enforcement.

In *King*, the Supreme Court recognized the danger in adopting a rule that would prevent the police from relying upon the exigent circumstances exception to prevent the destruction of evidence if their actions had played a role in creating the exigency. The Court noted that although a number of federal and state courts had considered this issue, they had employed multiple tests using different legal theories to decide such cases. In rejecting several of these tests due to their adoption of legal requirements that it characterized as “unsound,” the Supreme Court reaffirmed the long-established legal principle that “warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement.”²⁷

In explaining its reasoning in *King*, the Court examined several of the tests used by courts when presented with

challenges to searches under the police-created exigency doctrine. As previously noted, some courts, including the Kentucky Supreme Court, had used a so-called bad faith test. The Court expressly rejected this test as it was “fundamentally inconsistent” with its previous Fourth Amendment decisions.²⁸ Those decisions stand for the proposition that the appropriate focus in evaluating the actions of a law enforcement officer under the Fourth Amendment is considering whether the actions are objectively reasonable at the time they are taken, not the subjective motivations of the officer.

The Court also examined the use of a reasonable foreseeability test, such as that relied upon by the Supreme Court of Kentucky in its decision finding that the Lexington officers had improperly created an exigency to gain entry into the apartment. In its criticism of the reasonable foreseeability test, the Supreme Court noted it previously had rejected the notion that “police may seize evidence without a warrant only when they come across the evidence by happenstance.”²⁹ For example, in the oft-cited case of *Horton v. California*, the Supreme Court held that police may seize evidence in plain view even though an officer may be “interested in

an item of evidence and fully expects to find it in the course of a search.”³⁰

The Court also was concerned that the use of a reasonable foreseeability test to evaluate officers’ actions under the exigent circumstances exception would lead to an unacceptable degree of unpredictability. Rather than focusing on whether the officers’ actions were objectively reasonable at the time they were taken, courts

In spite of the presumption that a police officer’s entry into a home without a warrant is unlawful, both state and federal courts have carved out a number of exceptions to this general rule.

instead would be required on a case-by-case basis to “quantify the degree of predictability that must be reached before the police-created exigency doctrine comes into play.”³¹ Such an approach likely would create “unacceptable and unwarranted difficulties for law enforcement officers who must make quick

decisions in the field, as well as for judges who would be required to determine after the fact whether the destruction of evidence in response to a knock on the door was reasonably foreseeable based upon what the officers knew at the time.”³²

Another test used by courts applying the police-created exigency doctrine focused on whether the officers acted without a warrant even after they had developed sufficient probable cause to search a specific location. Such situations sometimes arise with a so-called knock-and-talk scenario where the police knock on the door of a particular residence and ask to speak with an occupant or seek consent to search. In rejecting such an approach, the court recognized that “there are many entirely proper reasons why police may not want to seek a search warrant as soon as the bare minimum of evidence needed to establish probable cause is acquired.”³³ The Court further added that “[f]aulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the Constitution.”³⁴

Finally, the Supreme Court rejected a test used by some lower courts that would deprive officers of the ability to rely upon the exigent circumstances exception when it is determined

that their investigation departed from “standard or good law enforcement practices.”³⁵ In its criticism of this test, the Court noted that not only would it fail to provide clear guidance to law enforcement officers but it also would require an inappropriate after-the-fact analysis of decisions that should remain within the province of law enforcement personnel.³⁶

Also, the Court declined to adopt a rule that “law enforcement officers impermissibly create an exigency when they engage in conduct that would cause a reasonable person to believe that entry is imminent and inevitable.”³⁷ King had argued that courts should consider such factors as the officers’ tone of voice in announcing their presence and the forcefulness of their knocks.³⁸ However, the Court noted that such a test likely would interfere with officers’ ability to properly respond to an emergency situation as it would require them to consider subtle and ill-defined standards of conduct.³⁹ For example, officers would be required to guess as to whether the tone and volume of their voice or the force of their knocking had caused them to violate the police-created exigency rule. Moreover, courts reviewing the officers’ conduct would have great difficulty in determining whether the police had crossed some poorly defined and nebulous threshold.

The Court rejected not only the test proposed by King but also those used by lower courts to decide police-created exigency issues. The Court first assumed for purposes of argument that exigent circumstances existed at the time the officers made the decision to enter King’s apartment without a warrant.⁴⁰ Once this threshold issue was established, the Court needed only to decide the fairly narrow issue of under what circumstances police



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impermissibly create an exigency.⁴¹ The focus of the Court’s analysis was whether the police violated the Fourth Amendment or threatened to do so prior to forcing entry into the apartment. Although the record indicated that the police had banged loudly on the door to the apartment and announced their presence, those actions are not outside the bounds of accepted law enforcement conduct under

the Fourth Amendment. The result would have been different had the police threatened the occupants to “open the door or else” or otherwise demanded entry to the apartment.

In holding that the exigent circumstances exception applies as long as the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment, the Court eliminated the confusion inherent in the tests used by the lower courts. The rule announced by the Court clearly allows officers confronted with circumstances, such as those present in *King*, to take appropriate steps to resolve the emergency situation. However, officers must be mindful of the fact that they cannot demand entry or threaten to break down the door to a home if they do not have independent legal authority for doing so. According to the Court, to do so would constitute an actual or threatened violation of the Fourth Amendment and, thereby, deprive the officers of the ability to rely upon the exigent circumstances exception.

Conclusion

The Court’s decision in *King* provides much-needed guidance for officers in dealing with many of the situations they encounter on a regular basis. Provided their actions fall within established legal

standards of conduct under the Fourth Amendment, officers no longer will have to guess as to whether they impermissibly caused an exigency, thereby depriving them of the ability to take appropriate action. As with all exceptions to the warrant requirement, officers should recognize that the burden remains on the government to justify fully its actions under the Fourth Amendment. Moreover, officers should be aware that their actions may be constrained by other applicable constitutional protections.⁴² ♦

Endnotes

- ¹ 131 S.Ct. 1849 (2011).
- ² U.S. Constitution, Fourth Amendment.
- ³ *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006), quoting *Groh v. Ramirez*, 540 U.S. 551, 559 (2004).
- ⁴ 858 F.2d 800, 805 (1st Cir. 1988).
- ⁵ See *Brigham City*, *supra*; and *Michigan v. Fisher*, 130 S.Ct. 546 (2009). See also, Michael T. Pettry, "The Emergency Aid Exception to the Fourth Amendment's Warrant Requirement," *FBI Law Enforcement Bulletin*, March 2011, p. 26.
- ⁶ See *United States v. Munoz-Guerra*, 788 F.2d 295, 298 (5th Cir.1986); *United States v. Richard*, 994 F.2d 244, 249-250 (5th Cir. 1993); and *Mann v. State*, 357 Ark. 159, 161 S.W. 3d 826, 834 (Ark. 2004).
- ⁷ See *United States v. MacDonald*, 916 F.2d 766, 772 (2nd Cir. 1990); *State v. Robinson*, 327 Wis.2d, 302, 326-328; and 786 N.W. 2d 463, 475-476 (Wis. 2010).
- ⁸ 131 S.Ct. 1849, 1854 (2011).
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ *Id.* (internal quotations omitted).
- ¹² *Id.*
- ¹³ *Id.*

¹⁴ Officers subsequently determined that the subject involved in the drug buy actually had entered the apartment on the right.

- ¹⁵ *Id.* at 1855.
- ¹⁶ *King v. Commonwealth*, 302 S.W.3d 649, 656 (Kentucky, Jan. 21, 2010).
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ *Id.*
- ²² *King*, at 1856 (internal quotations omitted).
- ²³ *Id.*
- ²⁴ 395 F.3d, 563, 566 (6th Cir. 2005).
- ²⁵ 364 F.3d 578, 590 (5th Cir. 2004) (internal quotations omitted).
- ²⁶ 906 F.2d 1278, 1284 (8th Cir. 1990).
- ²⁷ *King* at 1858.
- ²⁸ *Id.* at 1859.
- ²⁹ *Id.*
- ³⁰ 496 U.S. 128, 138 (1990).
- ³¹ *King* at 1859.
- ³² *Id.* at 1860.
- ³³ *Id.*
- ³⁴ *Id.* at 1861.
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *Id.*(internal quotations omitted).
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 1862.
- ⁴¹ *Id.*
- ⁴² Officers should note that although their actions may be viewed as reasonable under the Fourth Amendment, an individual still may allege violations of other constitutional guarantees, such as the Equal Protection Clause of the Fourteenth Amendment, if it appears that the actions of law enforcement were motivated by such factors as race or ethnicity.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Wanted: Photographs



The *Bulletin* staff always is looking for dynamic, law enforcement-related images for possible publication in the magazine. We are interested in those that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use digital photographs or color prints. It is our policy to credit photographers when their work appears in the magazine. Contributors sending prints should send duplicate copies, not originals, as we do not accept responsibility for damaged or lost prints. Send materials to:

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Quantico, VA 22135.

leb@fbiacademy.edu

Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Mark Wilke

Officer Mark Wilke of the Campbell County, Kentucky, Police Department responded to a call of a couch on fire inside a local residence. When he arrived at the scene, he found the house fully engulfed. In his attempt to locate the homeowner, a 53-year-old woman, he went to the back door and started yelling and banging. He then heard the woman yell from inside the residence that she was on fire. Officer Wilke was able to guide her to the back door, which she unlocked, but she reentered the home soon afterward. He followed the disoriented woman into the residence through thick black smoke and guided her outside. The woman suffered second degree burns to her face and first degree burns to her chest, and Officer Wilke was treated at the scene for smoke inhalation.



Sergeant Liskey



Deputy Sheriff Brock

Sergeant Paul Liskey and Deputy Sheriff Robert Brock of the Alameda County, California, Sheriff's Office were returning from a bomb detail in an explosive ordnance disposal (EOD) vehicle when they noticed a minivan traveling at a significantly slower speed than the flow of traffic. As they approached the van, it drifted into their lane and came to a stop, blocking both lanes. After receiving no response to their emergency lights and air horn, Deputy Brock exited the EOD vehicle and observed an elderly woman in the minivan in a catatonic state, going in and out of consciousness. He attempted to gain entry to the vehicle, but the doors were locked. Deputy Brock then instructed Sergeant Liskey to position their vehicle in front of the minivan to prevent it from rolling away should the driver's foot slip off the brake. As Sergeant Liskey was doing so, the woman inadvertently released the brake and the minivan began slowly accelerating down the freeway. Deputy Brock ran alongside the minivan as Sergeant Liskey placed the EOD vehicle in front of it. Using the rear bumper of the vehicle, he was able to guide the minivan towards a concrete center divider, where it was pinned. Sergeant Liskey then summoned medical aid for the woman while Deputy Brock gained access to her minivan and rescued her dog. She later was transported to a local hospital, and her dog was picked up by animal control personnel. It later was learned that the woman was a chemotherapy patient who previously had never passed out as a result of her treatment.

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Patch Call



Sixty years ago, the area encompassing Middleburg Heights, Ohio, was largely farmland. The city's police department patch, with its red barn and onions in the middle, represents this agrarian past. The modern day office building to the right reflects the area's growth into a progressive, suburban Cleveland community. The sun and sunbeams in the background are taken from The Great Seal of the State of Ohio, while the American flag at the base represents the city's deep rooted nationalism.



Idaho State Highway 46 runs through the center of the Gooding Police Department patch, as it does the city of Gooding itself. The century-old Gooding Hotel is depicted on the right side of the patch, while the left side depicts the Little Wood River that runs through the city, shadowed by the railroad tracks of the Union Pacific mainline. Above all is the American flag, which stands for the city's devotion to safeguarding the freedoms of the nation.